

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**AMERICAN GENERAL LIFE
INSURANCE COMPANY,**

॥ ॥ ॥ ॥ ॥ ॥ ॥ ॥ ॥ ॥ ॥

Plaintiff,

C. A. NO. H-05-1268

**ANTHONY MERCIER, SR., ANTHONY
MERCIER, JR., CHARLES MERCIER,
and MERCIER INSURANCE
AGENCY, INC..**

Defendants.

PLAINTIFF'S SUPPLEMENTAL BRIEFING ON DAMAGES

Plaintiff American General Life Insurance Company ("American General") files its Supplemental Briefing on Damages pursuant to the Court's February 21, 2007 Order as follows.

1. As testified to by Tim Donovan, American General's actuarial expert, at the February 21, 2007 hearing on American General's damages, there were 60 active policies in force as of the date of his report, December 1, 2006.¹ None of the 60 policies have lapsed or been terminated since Mr. Donovan's report.² See Affidavit of Tim Donovan attached hereto and incorporated as if fully set forth herein as Exhibit A.

2. For these reasons and those set forth at the hearing, American General respectfully requests that the Court enter a judgment in American General's favor and that it be

¹ A copy of his report is part of the record and was entered into as evidence at the hearing.

² In the interest of full disclosure, three of the 60 policies are no longer in force due to the death of the insured. As a result, American General has paid out \$355,000 in death benefits on Mercier policies since the filing of Donovan's report. While American General stands by the figures presented in Mr. Donovan's report and does not seek the \$355,000 in death benefits it paid as damages in the instant lawsuit, the three recent death claims on Mercier policies demonstrate the reasonableness of Donovan's findings and highlight American General's conservative approach to damages in this case.

awarded as damages \$36,300.42 in outstanding commissions paid on Mercier policies, \$180,056.94 American General incurred as costs and legal fees related to enforcement actions taken on multiple Mercier policies, \$2,815,173 representing the present value of in force post-contestable policies written by the Merciers, that its damages be trebled pursuant to 18 U.S.C. 1964(c) (stating that for a 18 U.S.C. 1962 violation a party "shall recover threefold") and \$90,202.70 as attorneys' fees in the present matter along with pre and post judgment interest at the maximum rate allowed by law and any further relief the Court may deem it justly entitled.

Respectfully submitted,

BRACEWELL & GIULIANI LLP

By: David McDowell, Jr.
David McDowell
Southern District Bar No. 18464
State Bar No. 00791222

Attorney-In-Charge
South Tower Pennzoil Place
711 Louisiana, Suite 2300
Houston, Texas 77002
(713) 223-2300 (Telephone)
(713) 221-1212 (Telecopier)

OF COUNSEL:

James W. Caldwell
State Bar No. 24031786
Federal ID No. 32125

BRACEWELL & GIULIANI LLP
South Tower Pennzoil Place
711 Louisiana, Suite 2300
Houston, Texas 77002
(713) 223-2300 (Telephone)
(713) 221-1212 (Telecopier)

ATTORNEYS FOR PLAINTIFF AMERICAN
GENERAL LIFE INSURANCE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded by Certified Mail/Return Receipt Requested on this the 26th day of February, 2007 as follows:

Anthony Mercier, Jr.
c/o Anthony Mercier Sr.
P. O. Box 1506
Augusta, Georgia 30903;

Anthony Mercier, Jr.
c/o Anthony Mercier Sr.
506 Georgia Avenue, #206
North Augusta, South Carolina 29841

Anthony Mercier, Jr.
c/o Anthony Mercier Sr.
761 N. Martintown Road
Edgefield, South Carolina 29824

Charles Mercier
c/o Anthony Mercier Sr.
P. O. Box 1506
Augusta, Georgia 30903;

Charles Mercier
c/o Anthony Mercier Sr.
506 Georgia Avenue, #206
North Augusta, South Carolina 29841

Charles Mercier
c/o Anthony Mercier Sr.
761 N. Martintown Road
Edgefield, South Carolina 29824

Anthony Mercier, Sr.
P. O. Box 1506
Augusta, Georgia 30903

Anthony Mercier, Sr.
506 Georgia Avenue, #206
North Augusta, South Carolina 29841

Anthony Mercier, Sr.
761 N. Martintown Road
Edgefield, South Carolina 29824

Mercier Insurance Agency, Inc.
c/o Anthony Mercier, Sr.
P. O. Box 1506
Augusta, Georgia 30903

Mercier Insurance Agency, Inc.
c/o Anthony Mercier, Sr.
506 Georgia Avenue, #206
North Augusta, South Carolina 29841

Mercier Insurance Agency, Inc.
c/o Anthony Mercier, Sr.
761 N. Martintown Road
Edgefield, South Carolina 29824



James W. Caldwell

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**AMERICAN GENERAL LIFE
INSURANCE COMPANY,**

卷之三

v

C. A. NO. H-05-1268

**ANTHONY MERCIER, SR., ANTHONY
MERCIER, JR., CHARLES MERCIER,
and MERCIER INSURANCE
AGENCY, INC.,**

Defendants.

AFFIDAVIT OF TIM DONOVAN

STATE OF TEXAS

8

COUNTY OF HARRIS

8

Before me, the undersigned notary, on this day, personally appeared Tim Donovan, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said:

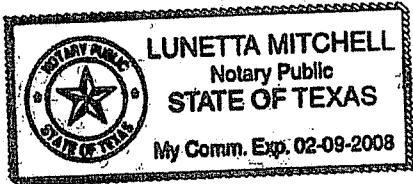
1. My name is Tim Donovan, I am over the age of 21 years of age, of sound mind, and I am fully competent to testify to the matters set forth herein. I have personal knowledge of the statements contained herein and the facts stated herein are true and correct.
 2. Since the filing of my December 1, 2006 report, none of the 60 policies that I analyzed in preparation of my report have terminated or lapsed. However, three of the policies are no longer in force due to the death of the insured. American General paid out \$355,000 in death benefits as a result of these three policies.

FURTHER AFFIANT SAYETH NAUGHT.



Tim Donovan

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority on this 26th day of February, 2007.



Lunetta Mitchell
Notary Public in and for
the State of Texas